



# CITY OF LODI COUNCIL COMMUNICATION

**AGENDA TITLE:** Authorize City Manager to Execute a Three -Year Agreement with Environmental Systems Research Institute, Inc. (ESRI) for Geographic Information System Software (\$163,125)

**MEETING DATE:** December 15,2010

**PREPARED BY:** Information Systems Manager

**RECOMMENDED ACTION:** Authorize City Manager to execute a three-year agreement with Environmental Systems Research Institute, Inc. (ESRI) for geographic information system software in the amount of \$163,125.

**BACKGROUND INFORMATION:** Geographic information systems (GIS) tools are used to capture, store, analyze, manage and map spatial data. GIS software has replaced paper as the medium to provide an assortment of essential information. The City currently utilizes GIS technology, mostly for internal purposes. Through the City's web page, the public also has access to a wealth of information using Autodesk Mapguide, a similar **GIS** product used by the City that displays a map of things such as garbage pickup days, bus and bike routes, and other useful information.

The City uses ESRI and Autodesk Mapguide products. Staff has relied upon ESRI for more complex internal uses, while Mapguide has been used for mapping services for the public. ESRI is the largest **GIS** software company in the world, is the recognized leader in GIS technology, has the largest selection of products, the most compatibility with other software, and the size and technical support staff to service the City's needs. The City is running a 10-year-old version of the Autodesk Mapguide product and the product needs updating to meet the growing demand from the public for GIS-formatted information.

For these reasons and more, adopting the ESRI standard city-wide will create training and buying efficiencies, it will allow the City to expand its **GIS** activities internally, enabling the City to offer more information to the public in an **easy-to-read** and understandable format, and it will allow more City staff to install and be trained to use GIS software at a reduced rate.

At present, the City uses GIS products as follows:

- Zoning and General Plan maps
- Creating, editing and analyzing spatial and attribute data
- Displaying data on maps stored in databases
- Geographical display of city infrastructure
- Tracking and mapping of sewer spills and blockages for state regulatory requirements for the Wastewater Collection System
- Tracking and mapping of water valves and fire hydrants for maintenance and asset management activities
- Mapping of wastewater pump stations, water wells, and water meters (in development)

APPROVED: \_\_\_\_\_

  
Konradt Bartlam, City Manager

Future uses of these products may include:

- Crime map
- Fire incident map
- Easement locator
- Real-time road closure and/or maintenance map
- A full GIS based mapping system with laptop computers in all Water and Wastewater service trucks
- Tracking and managing of all departmental assets and works flows
- Electric, water and wastewater line locations

Currently, there are five ESRI licenses city-wide, three of which are "floating" concurrent licenses used by four departments (Fire, Electric Utility, Community Development, and Public Works). In addition, the City has also purchased one Spatial Analyst and one ArcGIS Server license. Police Dispatch also uses ESRI technology, which is integrated into the OSSI system. Each license was purchased individually (see Appendix A). The City currently spends about \$5,300 in annual support costs for licenses.

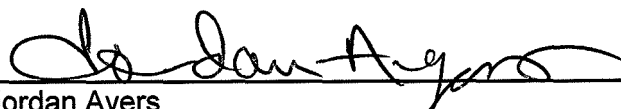
As the City endeavors to make greater use of spatial data and **GIS** mapping, staff has determined the most cost-effective approach is to purchase a Small Municipal and County Enterprise License. Such a license allows unlimited use of ESRI products on as many workstations as desired, including support. The proposed contract also includes free registrations to the annual ESRI conference, telephone helpdesk support, a five percent discount on instructor-led training, and \$10,000 worth of online ("virtual campus") training.

There is a need to buy more ESRI licenses, but departments have been holding off pending approval of this proposal because staff believes it will be more cost effective to obtain them under this agreement.

The menu of products available under this license (see Appendix B) is extensive and also includes those the City is currently using. The enterprise license provides substantial savings compared to buying licenses individually. A three-year contract with ESRI costs \$163,125, payable at \$54,375 per year. EUD and Public Works, the largest users of ESRI products, will split the first-year cost.

**FISCAL IMPACT:** Currently budgeted; potential of savings thousands of dollars in licensing costs over the term of the contract.

**FUNDING:** Included in FY 2010/11 Budget as follows:  
EUD Account No. 161000.1820 - \$27,187.50  
Water Account No. 180451.7313 - \$13,593.75  
Wastewater Account No. 170401.7313 - \$13,593.75

  
Jordan Ayers  
Deputy City Manager/Internal Services Director

## Appendix A

### Sample of Individual costs of ESRI ArcGIS software

ESRI Product	Per License
<b><u>ArcGIS Server</u></b>	
Enterprise Advanced	\$40,000
Enterprise Standard	\$20,000
<b><u>ArcGIS Desktop</u></b>	
ArcINFO	\$14,000
ArcEditor	\$7,000
ArcView Concurrent use	\$3,500
ArcView Single Use	\$1,500
<b><u>ArcGIS Desktop Extensions</u></b>	
Spatial Analyst	\$2,500
3D Analyst	\$2,500
Data Interoperability	\$2,500
Network Analyst	\$2,500

## Appendix B

### ENTERPRISE SOFTWARE SCHEDULE

#### **Unlimited Quantities**

##### **Desktop Software and Extensions**

- ArcInfo
- ArcEditor
- ArcView
- ArcGIS Desktop Extensions: 3D Analyst, Spatial Analyst, Network Analyst, Geostatistical Analyst, ArcScan for ArcGIS, ArcGIS Publisher, Maplex for ArcGIS, Schematics, and Job Tracking for ArcGIS (JTX)

##### **Server Software and Extensions**

- ArcGIS Server Workgroup or Enterprise (Advanced, Standard, and Basic)
- ArcIMS
- ArcGIS Server Extensions: 3D, Schematics, Geostatistical, Job Tracking, Network, Image, and Spatial

##### **Developer**

- ArcGIS Engine Runtime
- ArcGIS Engine Runtime Extensions: 3D, Spatial, Geodatabase Update, Network, Schematics, and Maplex

#### **Limited Quantities**

One Annual Subscription to ESRI Developer Network (EDN)



November 16, 2010

Mr. Steve Mann  
CITY OF LODI  
221 W PINE ST  
LODI, CA 95241

Dear Steve,

The ESRI Small Municipal and County Enterprise License Agreement (ELA) is a three-year agreement that will grant your organization access to ESRI® software on an unlimited basis including maintenance on all software offered through the ELA for the term of the agreement. The ELA will be effective on the date executed and will require a firm, three-year commitment.

Based on ESRI's work with several organizations similar to yours, we know there is significant potential to apply geographic information system (GIS) technology in many operational and technical areas within your organization. For this reason, we believe that your organization will greatly benefit from an enterprise license agreement. An ELA will provide your organization with numerous benefits including:

- A lower cost per unit for licensed software
- Substantially reduced administrative and procurement expenses
- Maintenance on all ESRI software deployed under this agreement
- Complete flexibility to deploy software products when and where needed

The following business terms and conditions will apply:

- All current departments, employees, and in-house contractors of the organization will be eligible to use the software and services included in the ELA.
- If your organization wishes to acquire and/or maintain any ESRI software during the term of the agreement that is not included in the ELA, it may do so separately at the ESRI pricing that is generally available for your organization for software and maintenance.
- The organization will establish a single point of contact for orders and deliveries and will be responsible for redistribution to eligible users.
- The organization will establish a Tier 1 support center to field calls from internal users of ESRI software. The organization may designate individuals as specified in the ELA who may directly contact ESRI for Tier 2 technical support.
- The organization will provide an annual report of installed ESRI software to ESRI.

Small Government ELA

- ESRI software and updates that you are licensed to use will be shipped automatically as they become available.
- The organization will act as an ESRI reference site and will permit ESRI to publicize its use of ESRI software and services.
- Licenses are valid for the term of the ELA.

This program offer is valid for 90 days. To complete the agreement within this time frame, please contact me within the next seven days to work through any questions or concerns you may have.

To expedite your acceptance of this ELA offer:

1. Sign and return the signature page of the ELA with a Purchase Order or issue a Purchase Order that references this ELA Quotation and includes the following statement on the face of the Purchase Order: **"THIS PURCHASE ORDER IS GOVERNED BY THE TERMS AND CONDITIONS OF THE ESRI SMALL MUNICIPAL AND COUNTY ELA, AND ADDITIONAL TERMS AND CONDITIONS IN THIS PURCHASE ORDER WILL NOT APPLY."** and have it signed by an authorized representative of the organization.
2. On the first page of the ELA, identify the central point of contact/agreement administrator. The agreement administrator is the party that will be the contact for management of the software, administration issues, and general operations. Information should include name, title if applicable, address, phone number, and e-mail address.
3. In the purchase order, identify the "Ship to" and "Bill to" information for your organization.
4. Send the purchase order and agreement to the address noted below:

ESRI  
Attn.: Customer Service SG-ELA  
380 New York Street  
Redlands, CA 92373-8100

Or e-mail [service@esri.com](mailto:service@esri.com) or fax documents to 909-307-3083.

I appreciate the opportunity to present you with this proposal, and I believe it will bring great benefits to your organization.

Thank you very much for your consideration.

Best regards,

Michelle DeBoves

**ENVIRONMENTAL SYSTEMS RESEARCH INSTITUTE. INC.**

380 New York St

Redlands, CA 92373-8100

Phone: (909) 793-2853

Fax: (909) 307-3025

DUNS Number: 06-313-4175 CAGE Code: 0AMS3

To expedite your order, please attach a copy of  
this quotation to your purchase order.

Quote is valid from: 06/28/2010 To: 12/25/2010

**Quotation # 20368935**

Date: June 28, 2010

Customer # 352276 Contract #

CITY OF LODI

INTERNAL SERVICES ISD

221 W PINE ST

LODI, CA 95241

ATTENTION: Steve Mann

PHONE: (209) 333-5548

FAX: (209) 333-6807

Material	Qty	Description	Unit Price	Total
110037	1	Populations of 50,001 to 100,000 Small Government Enterprise Term License Agreement	50,000.00	50,000.00
110037	1	Populations of 50,001 to 100,000 Small Government Enterprise Term License Agreement	50,000.00	50,000.00
110037	1	Populations of 50,001 to 100,000 Small Government Enterprise Term License Agreement	50,000.00	50,000.00
			Item Total:	150,000.00
			Subtotal:	150,000.00
			Sales Tax:	13,125.00
			Estimated Shipping & Handling(2 Day Delivery) :	0.00
			Contract Pricing Adjust:	0.00
			Total:	\$163,125.00

The following items are optional items listed for your convenience.  
These items are not included in the totals of this quotation.

Material	Qty	Description	Unit Price	Total
115573	1	ArcPad Populations of 50,001 to 100,000 Small Government Enterprise License Agreement	1,000.00	1,000.00
114403	1	ArcGIS Data Interoperability Populations of 50,001 to 100,000 Small Government Enterprise License Agreement	3,000.00	3,000.00
117103	1	Bing Maps Add-On for Populations of 50,001 to 100,000 Small Government Enterprise License Agreement	5,000.00	5,000.00

\* Please indicate on your purchase order if this purchase is funded through the American Recovery and Reinvestment Act, and whether Esri is a Prime Recipient, Sub-recipient, or Vendor for reporting purposes

For questions contact: Michelle DeBoves

Email: [mdeboves@esri.com](mailto:mdeboves@esri.com)

Phone: (909) 793-2853 x2679

Acceptance of this quotation is limited to the Esri License Agreement and the Quotation Terms and Conditions  
This Quotation is made in confidence for your review. It may not be disclosed to third parties, except as required by law.

**If sending remittance, please address to: Esri, File No. 54630, Los Angeles, Ca 90074-4630**

DEBOVESM

**This offer is limited to the terms and conditions incorporated and attached herein.**



## ArcGIS ONLINE PREMIUM SERVICES USE AGREEMENT

ESRI, 380 New York St., Redlands, CA 92373-8100 USA • TEL 909-793-2853 • FAX 909-793-5953

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ENVIRONMENTAL SYSTEMS RESEARCH INSTITUTE, INC. ("ESRI"), IS WILLING TO GRANT THE USER A LICENSE TO ACCESS AND CONSUME THE ArcGIS ONLINE PREMIUM SERVICE(S) DESCRIBED IN THIS USE AGREEMENT ON THE CONDITION THAT THE USER BELOW AGREE TO THE TERMS AND CONDITIONS CONTAINED HEREIN.

### SECTION A—GENERAL TERMS AND CONDITIONS

This Use Agreement is entered into by and between ESRI and User. ESRI is making available to User certain premium data and/or imagery services provided hereunder (hereinafter individually or collectively referred to as the "Service(s)") through the Service(s) Web site. ESRI provides the Service(s) to User subject to the User's payment of applicable license or subscription fees, the terms and conditions of this Use Agreement, and any other operative Addendum(s), that may apply for the respective Service(s). Unless explicitly stated to the contrary, these terms and conditions, and the terms and conditions of any operative Addendum, shall govern User's use of any new feature(s) that augment or enhance the current Service(s), including the release of any new Service(s). If User is using any of the Service(s) on behalf of User's employer, User represents that User is authorized to accept these terms and conditions on behalf of User's employer.

#### ARTICLE 1—CONFIDENTIAL INFORMATION

To gain access to the Service(s), the parties hereby agree to these confidentiality provisions.

**1.1** User acknowledges that User will obtain direct access via ESRI's Web site to certain ESRI confidential information including any and all password or controlled access information provided by ESRI and ESRI databases containing confidential information of ESRI and its licensors. ESRI acknowledges that ESRI may receive User's confidential information, data, business, product, or application marketing strategies and other valuable technical or personal information. The receiving party shall hold such confidential information ("Information"), which Information has been clearly marked as "Confidential" or "Proprietary" by the disclosing party, in strict confidence and may provide Information to employees within its organization only on a need-to-know basis. User shall maintain and safeguard the confidential nature of usernames, passwords, or registration information received from ESRI or its third party suppliers with the same degree of care as it safeguards its own confidential information of similar nature, but in no case less than reasonable care. When applicable, ESRI may also distribute Information to ESRI distributors and affiliates who have a need to know and actively participate in the delivery of ArcGIS Online Services or corresponding support to User. User may use the Information obtained from ESRI's Web site, or by any other means of disclosure, solely for the purpose of developing, maintaining, and supporting User's Web-enabled applications subject to the respective grant of license in Section B, Article 2, to license additional ESRI software, data, or Service(s), or to support any other activities in furtherance of this Use Agreement.

**1.2** The receiving party shall not acquire any rights, title, or ownership to the disclosing party and/or its licensor's Information, except the limited rights to use the Information as described above.

**1.3** The receiving party's obligations to maintain the confidentiality of the disclosing party's Information shall continue for three (3) years after the date of first receipt of any Information hereunder. Upon termination of this Use Agreement or upon the disclosing party's written request, the receiving party must cease use of Information and return or destroy all Information.

**1.4** This Article 1, Confidential Information, shall impose no obligation upon the receiving party with respect to Information that the receiving party can establish by legally sufficient evidence that (a) it possessed, or knew, prior to its receipt hereunder, or received from the disclosing party without an obligation to maintain its confidentiality; (b) Information is or has become generally known to the public through no act or omission by the receiving party, or otherwise without violation of this Use Agreement; (c) Information was obtained from a third party that had the right to disclose it without an obligation to keep such information confidential; (d) Information was independently developed without the use of Information and without the participation of individuals who have had access to Information; or (e) Information is obtained in response to a valid order by a court or other governmental body, as otherwise required by law or as necessary to establish the rights of either party under this Use Agreement and as disclosed after adequate prior notice to the disclosing party, to afford the disclosing party the opportunity to object to or seek a protective order against the disclosure.



## **ARTICLE 2—USER'S CONDUCT REGARDING THE USE OF ESRI WEB SITE AND SERVICE(S)**

**2.1** User agrees not to use the Service(s) in any way for spamming or to transmit chain letters, junk e-mail, or bulk communications. Without liability, ESRI reserves the right to block, filter, or delete any such unsolicited communications described above. User agrees not to transmit through the Service(s) any content that is objectionable or upload such content onto ESRI's Web site or its servers. User agrees not to use any ESRI domain name as a pseudonymous return e-mail address for any communications that User transmits from another location or through another service. User agrees not to pretend to be someone else or spoof their identity when using the Service(s).

**2.2** User agrees not to use the Service(s) for any unlawful activities not otherwise covered above, including without limitation, attempting to compromise the security of any networked account or site, operating an illegal lottery or gambling operation, or making direct threats of physical harm. In addition to the foregoing, User's use of the Service(s) shall not (a) impersonate any person or entity, including, but not limited to, an ESRI official or employee, ESRI's Web site or Service(s), or falsely state or otherwise misrepresent User's affiliation with an ESRI person or entity; (b) upload, post, or otherwise transmit any material that contains software viruses or any other computer code, files, or programs designed to interrupt, destroy, or limit the functionality of any computer software, hardware, or telecommunications equipment; (c) intentionally or unintentionally violate any applicable local, state, or federal law or any regulations having the force of law including, but not limited to, regulations promulgated by the U.S. Securities and Exchange Commission or any national securities exchanges; or (d) stalk or otherwise harass another. Without liability, ESRI reserves the right to terminate this Use Agreement and to discontinue User's access to the Service(s) immediately upon ESRI's determination that User has engaged in any of the foregoing. Additional restrictions, or terms of use, concerning the use of ESRI's third party licensor(s) of data and/or imagery contained in the Service(s) are set forth in Section C below.

## **ARTICLE 3—NOTICES; MODIFICATION AND TERMINATION OF SERVICE(S)**

ESRI may send notices to User via e-mail, regular mail, and/or through available on-line documentation. The Service(s) may also provide notices of changes to the terms and conditions of this Use Agreement or other matters by displaying notices or links to notices to User generally about the Service(s). ESRI reserves the right, at any time and from time to time, to modify change, restrict, or discontinue, temporarily or permanently, the Service(s) (or any part thereof) with or without notice. ESRI may make changes to the Service(s), including those regarding products, services, programs, Use terms and conditions, and prices, at any time. For Users accessing Services that contain data and/or imagery from Microsoft, ESRI reserves the right at its sole discretion or at such time User has exceeded the then current cumulative annual transaction level, to convert the User's license to a subscription based license upon electronic mail notice to the registered User. User can review the most current version of the Service(s) or this Use Agreement, and/or any operative Addendum that may apply, at any time at [www.esri.com/legal/](http://www.esri.com/legal/). If a modification of the Service(s) or the terms of the Use Agreement is unacceptable to the User, the User may cancel the Use upon written notice to ESRI. If User continues to use the Service(s), the User will be deemed to have accepted the modifications. Any termination of User's access to the Service(s) due to the breach of any provision of this Use Agreement may be effected without prior notice, and ESRI may immediately deactivate or delete User's Service(s) site account and/or bar any further access to such files or the Service(s). Furthermore, ESRI will not be liable to User or any third party for any termination, modification, or suspension of the Service(s).

## **ARTICLE 4—INTELLECTUAL PROPERTY RIGHTS**

**4.1** "ESRI Trademarks" means all names, marks, brands, logos, designs, trade dress, and other designations ESRI uses in connection with the Service(s), software, data, or Information. User may not use or co-brand User's applications, products, or material associated with User's applications or services with any ESRI Trademarks. User agrees not to incorporate any ESRI Trademarks into User's trademarks, service marks, company names, Internet addresses, domain names, or any other similar designations.

**4.2** As a condition of ESRI's grant of license to use the Service(s), User shall not remove any intellectual property notices, proprietary legends, and/or U.S. Government Limited/Restrictive Rights legend contained in the Service(s), the metadata files of any of the Service(s), and any online and/or hard-copy attribution page of any data or documentation delivered hereunder and shall affix any attribution notices as may be specified therein.

**4.3** Except as specifically set forth in Section B, Article 2, in no event shall this Use Agreement confer any license under any of ESRI's or any third-party provider's intellectual property rights, whether by estoppel, implication, or otherwise. User acknowledges sole responsibility for obtaining any other use licenses.

**4.4 Copyright Policy.** ESRI's copyright policy is to respond to notices of alleged copyright infringement that comply with applicable international intellectual property law (including, in the United States, the Digital Millennium Copyright Act) and to take down allegedly infringing materials and/or terminate the accounts of repeat infringers, as applicable. Further details of ESRI's copyright policy can be found at [http://www.esri.com/legal/licensing/dmca\\_policy.html](http://www.esri.com/legal/licensing/dmca_policy.html).

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**5.4** BOTH PARTIES EXPRESSLY ACKNOWLEDGE AND AGREE THAT THE INTERNET IS A NETWORK OF PRIVATE AND PUBLIC NETWORKS, AND THAT (a) THE INTERNET IS NOT A SECURE INFRASTRUCTURE, (b) NEITHER PARTY HAS CONTROL OVER THE INTERNET, AND (c) NEITHER PARTY IS LIABLE FOR DAMAGES UNDER ANY THEORY OF LAW RELATED TO THE DISCONTINUANCE OF OPERATION OF ANY PORTION OF THE INTERNET OR POSSIBLE REGULATION OF THE INTERNET THAT MIGHT RESTRICT OR PROHIBIT THE OPERATION OF THE SERVICE(S).

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**5.6** NO ADVICE OR INFORMATION, WHETHER ORAL OR WRITTEN, OBTAINED BY USER FROM ESRI OR THROUGH OR FROM THE SERVICE(S) WILL CREATE ANY WARRANTY OR CONDITION NOT EXPRESSLY STATED IN THE TERMS OF **THIS** USE AGREEMENT.

## **ARTICLE 6—LIMITATION OF LIABILITY**

**6.1** IN NO EVENT SHALL ESRI OR ITS THIRD-PARTY LICENSORS BE LIABLE FOR ANY DIRECT, INDIRECT, INCIDENTAL, SPECIAL, CONSEQUENTIAL, PUNITIVE, OR EXEMPLARY DAMAGES, INCLUDING, BUT NOT LIMITED TO, DAMAGES FOR LOSS OF PROFITS, REVENUE, GOODWILL, USE, DATA, ELECTRONICALLY

TRANSMITTED ORDERS, OR OTHER ECONOMIC ADVANTAGE (EVEN IF ESRI HAS BEEN ADVISED OF THE POSSIBILITY OF SUCH DAMAGES), HOWEVER CAUSED AND REGARDLESS OF THE THEORY OF LIABILITY, WHETHER IN CONTRACT (INCLUDING FUNDAMENTAL BREACH), TORT (INCLUDING NEGLIGENCE), OR OTHERWISE, ARISING OUT OF OR RELATED TO THE FOLLOWING: (a) THE USE OF, OR THE INABILITY TO USE, THE SERVICE(S); (b) THE COST OF PROCUREMENT OF SUBSTITUTE GOODS AND SERVICE(S) RESULTING FROM ANY GOODS, DATA, INFORMATION, OR SERVICE(S) PURCHASED OR OBTAINED OR MESSAGES RECEIVED OR TRANSACTIONS ENTERED INTO THROUGH OR FROM THE SERVICE(S); (c) UNAUTHORIZED ACCESS TO, OR ALTERATION OF, USER'S TRANSMISSIONS OR DATA; (d) STATEMENTS OR CONDUCT OF ANY THIRD PARTY ON THE SERVICE(S); OR (e) ANY OTHER MATTER RELATING TO THE SERVICE(S) INCLUDING CONTENT USER MAY DOWNLOAD, USE, MODIFY, OR DISTRIBUTE FROM ESRI'S WEB SITE.

**6.2** USER HAS SOLE RESPONSIBILITY FOR ADEQUATE PROTECTION AND BACKUP OF ANY DATA AND/OR ANY EQUIPMENT USED IN CONNECTION WITH THE SERVICE(S) AND WILL NOT MAKE A CLAIM AGAINST ESRI FOR LOST DATA, RERUN TIME, INACCURATE OUTPUT, WORK DELAYS, OR LOST PROFITS RESULTING FROM THE USE OF THE SERVICE(S).

**6.3** USER AGREES TO HOLD ESRI HARMLESS FROM, AND USER COVENANTS NOT TO SUE ESRI FOR, ANY CLAIMS BASED ON USING THE SERVICE(S) AS INTEGRATED AS PART OF USER'S VALUE-ADDED APPLICATION, WHETHER IN CONTRACT (INCLUDING FUNDAMENTAL BREACH), TORT (INCLUDING NEGLIGENCE, INFRINGEMENT), OR OTHERWISE.

**6.4** User agrees that the limitation of liability and disclaimers set forth in this Use Agreement will apply regardless of whether User has accepted any Service(s), software, data, or documents delivered by ESRI. User agrees that ESRI sets its prices and entered into this Use Agreement in reliance upon the disclaimers and limitations set forth herein, that the same reflect an allocation of risk between the parties (including the risk that a contract remedy may fail of its essential purpose and cause consequential loss), and that the same form an essential basis of bargain between the parties.

## **ARTICLE 7—INDEMNITY**

ESRI is committed to respecting others' intellectual property rights and asks that User do the same. To the extent permitted by law, User agrees to defend, indemnify, and hold harmless ESRI and its subsidiaries; affiliates; officers; agents; cobranders; alliance members or other partners, employees, or agents from any claim or demand, including reasonable attorneys' fees, made by any third party due to, or arising out of, User's use of the Service(s) including any use by User's employees or agents (including uses as described in Article 1.1), User's connection to the Service(s), User's violation of the terms and conditions of this Use Agreement, or User's violation of any rights of a third party. ESRI may, at its sole discretion, terminate the accounts or access rights of Users who misappropriate, infringe, or otherwise violate a third party's intellectual property rights.

## **ARTICLE 8—ESRI'S PRIVACY POLICY**

ESRI respects User's desire for privacy. ESRI's Privacy Policy can be found at [www.esri.com/privacy](http://www.esri.com/privacy). By using the ESRI Web site, User is consenting to the processing of User's registration Information by ESRI, by the data and/or service provider, and, if applicable, by any authorized ESRI distributor responsible for providing technical support to User and consenting to the terms of ESRI's Privacy Policy. If ESRI decides to change that policy, it will post the revised policy prominently on ESRI's Web site or otherwise bring it to User's attention, so that User is always aware of what ESRI does with User's registration Information.

## **ARTICLE 9—GENERAL INFORMATION**

**9.1** This Use Agreement constitutes the entire agreement between User and ESRI and governs User's use of the Service(s), superseding any prior agreements between User and ESRI (including, but not limited to, any prior versions of the Use Agreement). Also, User may be subject to additional specific terms and conditions that may apply when User accesses and uses other Service(s), ESRI software, third-party content, or third-party software. User may not assign or otherwise transfer the terms and conditions nor any rights granted herein. Articles 1, 4, 5, 6, 7, and 9 shall survive termination of this Use Agreement.

**9.2** This Use Agreement shall be construed and enforced in accordance with, and be governed by, the laws of the United States of America and the State of California without reference to conflict of laws principles. User and ESRI agree to submit to the personal and exclusive jurisdiction of the courts located within the county of San Bernardino, California. The parties specifically disclaim the U.N. Convention on Contracts for the International Sale of Goods.

**9.3** User acknowledges and agrees that the Service(s) are subject to the U.S. Export Administration Laws and Regulations. Diversion of such Service(s) contrary to U.S. law is prohibited. User agrees that none of the Service(s), software, data, or Information, or any direct product there from, are being, nor will be, acquired for shipping, transferring, or reexporting, directly or indirectly, to proscribed or embargoed countries or their nationals, nor will it be used for nuclear activities, chemical biological weapons, or missile projects unless authorized by the U.S. government. User certifies that User is not on the U.S. Department of Commerce's Denied Persons List or affiliated lists or on the U.S. Department of the Treasury's Specially Designated Nationals List. User agrees to comply strictly with all U.S. export laws and assume sole responsibility for obtaining licenses to export or reexport as may be required. User further agrees to comply with all import laws, restrictions, and regulations applicable to the location where the Service(s) are received by the User.

**9.4** Any breach of this Use Agreement will result in the irreparable harm to ESRI or its third-party licensors for which damages would be an inadequate remedy and, therefore, in addition to its rights and remedies otherwise available at law, ESRI shall have the right to an injunction, specific performance, or other equitable relief in any court of competent jurisdiction to prevent violation of these terms and without the requirement of posting a bond or undertaking or proving injury as a condition for relief.

**9.5** The failure of ESRI to exercise or enforce any right or provision of the terms and conditions of this Use Agreement does not constitute a waiver of such right or provision. If a court of competent jurisdiction finds any provision of the terms of this Use Agreement to be invalid, the parties nevertheless agree that the court should endeavor to give effect to the parties' intentions as reflected in the provision, and the other provisions of the terms and conditions of this Use Agreement remain in full force and effect. Regardless of any statute or law to the contrary, any claim or cause of action arising out of, or related to use of, the Service(s) or the terms and conditions of this Use Agreement must be filed within one (1) year after such claim or cause of action arose or be forever barred.

**9.6** Fees quoted to User are exclusive of any and all applicable taxes or fees including, but not limited to, sales tax, use tax, value-added tax (VAT), customs, duties, or tariffs, and shipping and handling charges.

## **SECTION D P E C I A L TERMS AND CONDITIONS FOR USE WITH ArcGIS ONLINE SERVICES**

### **ARTICLE 1—DESCRIPTION OF SERVICE**

**1.1 ArcGIS Online Services.** ESRI, through its Web site, provides User with certain premium data and/or imagery Services. For details on premium services, see <http://www.esri.com/software/arcgis/arcgisonline/map-services.html>.

**1.2** ESRI may make improvements and/or changes in its offerings of the Service(s), or prices described in this ESRI Web site at any time without notice. Changes are periodically made to the Web site and to the Service(s). ESRI may amend the ArcGIS Online Services Use Agreement or this or any other operative Addendum(s) at any time by posting the amended terms on this site.

**1.3** Updates to the Service(s) described in Article 1.2 above are immediately made available to User upon their release for commercial availability as described in the online documentation and are provided to User at no additional charge.

### **ARTICLE 2—LICENSE**

- a. Grant for ArcGIS Online Premium Services for ArcGIS Users.** Upon the User's payment of the applicable subscription fee, User is granted a nonexclusive, nontransferable, limited license to access the Service(s), whether through a desktop application or a server application interface, to which User subscribes. Such license includes the right to access the Service(s) made available on the Web site and to use the Service(s) to develop and integrate Service(s)-generated functionality into Web-enabled applications. The Service(s) shall be used solely by User for User's own internal business purposes, including Internet and extranet access and solely in conjunction with ESRI software or applications. User shall include the applicable ArcGIS Online Premium Services copyright attribution notice as set forth in the relevant data source. In the event User should (i) create a Web-enabled application using the Service(s) and, (ii) intend to deploy such application to third parties as an Application Service Provider (ASP), as defined below, then

additional license or subscription fees will be due and payable to ESRI, and (iii) the User agrees to have an enforceable agreement in place with any customer or end user of such Web-enabled application that contains terms and conditions substantially similar to the terms and conditions of this Use Agreement and any operative Addendum(s) that may apply. For the purposes of this Article 2, an ASP shall mean any individual, business, government, or educational Users that intends to operate or use an application created that uses the Service(s) (i) outside of their business or organization, and (ii) in a commercial environment that generates income or is used to promote the generation of income. Additional ESRI software, data, or information not included in the Service(s) is available to User for use in conjunction with the Service(s), subject to a separate ESRI license agreement. User may require third-party owned and provided data that will require additional third-party terms and conditions that are set forth in Section C hereto. User shall maintain accurate business records, including accurate transactions records of its use of the Service(s) under this section. ESRI reserves the right to monitor User's accounts and transactions, and may audit upon reasonable written notice to User.

- b. **Grant for ArcGIS Online Premium Services for API Users.** User is granted a nonexclusive, nontransferable, limited license to access the Service(s), and updates, to which User subscribes. Such license includes the right to access the Service(s) made available on the Web via alternative server application interfaces, and to use the Service(s) to develop and integrate Service(s) generated functionality into Web-enabled applications. The Service(s) shall be used solely by User and for User's own business purposes only. In the event User should (i) create a Web-enabled application using the Service(s) and, (ii) intends to deploy such application to third parties acting as an ASP as defined in (a) above, then additional license or subscription fees will be due and payable to ESRI. The User agrees to have an enforceable agreement in place with any customer or end user of such Web-enabled ASP application that contains terms and conditions substantially similar to the terms and conditions of this Use Agreement and any operative Addendum(s) that may apply. User may require third-party owned and provided data that will require additional terms and conditions that are set forth in Section C hereto. ESRI software, data, or documentation not included in the Service(s) is available to User for use solely in conjunction with the Service(s), or with ESRI Software, subject to a separate ESRI license agreement. User shall maintain accurate business records, including accurate transactions records of its use of the Service(s) under this section. ESRI reserves the right to monitor User's accounts and transactions, and may audit upon reasonable written notice to User.
- c. **Commercial Use of Services.** Upon User's payment to ESRI of the applicable license fee(s) and the execution of this Use Agreement, User may access, download, view, copy, and print Services available on ESRI Web sites, for User's Commercial Use. As a condition of this grant of Commercial Use license, User agrees to have in place a license agreement with all of User's third party customers the terms of which protect the Intellectual Property rights of ESRI and its licensor(s) substantially similar to the terms and conditions herein. User shall maintain accurate business records, including accurate transactions records, of any such Commercial Use licenses which ESRI may audit upon reasonable written notice to User. On or before the renewal date of the authorized Commercial Use, User shall provide such written transaction records to ESRI. For the purposes of this Article 2 c, Commercial Use means User's authorized use of the Services wherein User provides the Services to third parties through authorized transactions that User and/or its third party customers generate income, or promote the generation of income from use.
- d. **Limitations.** Except as may be expressly provided for elsewhere herein, User may not copy, download, store, cache, or otherwise distribute, publish, transmit, transfer, sell, or otherwise use the Service(s). User may not sell, rent, lease, lend, time-share, assign, or transfer any right to use the Service(s) to any third party without the prior express written permission of ESRI. Except for User's use of the Service(s) in conjunction with ArcGIS when User may download and store the results derived from User's use of the Service(s), User may not store the results derived from User's use of the Service(s) for the purpose of creating a value-added Web-enabled application that User intends to resell, license, or otherwise distribute to third parties. User may not reverse engineer, decompile, or disassemble the Service(s), except to the extent that such activity is permitted by applicable law notwithstanding this restriction, in order to protect ESRI or its suppliers' trade secrets and proprietary information contained in the Service(s). User may not create derivative Service(s) or add value to the Service(s) and thereafter resell or otherwise distribute the Service(s) as User's own services. User may not use the Service(s) and reformat and display the Service(s) in an attempt to mirror and/or make commercial use of the ESRI Web site. All rights not specifically granted in this Article 2, License are reserved to ESRI.
- e. **Evaluation License—Bing Maps.** User may access and utilize data and/or imagery provided by Microsoft for the limited purpose of its own internal evaluation of Bing Maps subject to the terms of this Use License and (i) the period of User's evaluation shall not exceed one (1) consecutive ninety (90) day period only, (ii) use of the Service(s) are limited to evaluation, development and testing of applications, (iii) use of the Service(s) is limited to no more than 30,000 transactions per month, (iv) user may not download more than 250 points of interest at any one time, and (v) user may only access the Service(s) via the staging environment only.

### ARTICLE 3—MISCELLANEOUS OR SPECIAL TERMS

None

**SECTION C — TERMS AND CONDITIONS REQUIRED FOR USE OF THIRD-PARTY DATA AND/OR IMAGERY IN CONJUNCTION WITH ESRI ArcGIS ONLINE PREMIUM SERVICES**

ESRI agrees to make available to the User certain Premium ArcGIS Online Services(s) that may include datasets and/or imagery owned by certain third-party suppliers ("Third-Party Data"). In the event User accesses or utilizes such Third-Party Data, User's use of such Third-Party Data will be governed, in addition to the terms and conditions of this Use Agreement, by the terms and conditions set forth in the Use of Data Restrictions page found at [www.esri.com/legal/](http://www.esri.com/legal/).

**Third Party Data and/or Imagery Use Terms.** The authorized use of any Third Party Data contained in the Service(s) accessed by User shall be governed by the following terms and conditions:

- A. If User utilizes Third Party Data and/or Imagery owned and provided by I-cubed as part of User's access to the Service(s), then such use will be subject to the following terms and conditions:
1. User may use any data and/or imagery for User's own internal business purposes, and solely in conjunction with any ESRI ArcGIS product.
  2. User may cache the data and/or imagery on the client side for improved performance of the web-enabled application, or may delete the cache and access the image tiles from the server on an as needed basis.
  3. Data and/or any imagery downloads are not permitted, without the express prior written permission of ESRI. Additional terms and license fees will apply to any such use permission.
  4. In no event shall user resale any data and/or imagery provided by I-cubed.
- B. If User utilized Third Party Data and/or Imagery owned and provided by Microsoft as part of User's access to the Service(s), then such use will be governed by the following terms and conditions:
1. Upon User's consent to this ArcGIS Online Premium Services Use Agreement, User expressly agrees that use of the any data and/or imagery provided by Microsoft as part of the Service(s) shall be governed by the terms and conditions of the Microsoft Terms of Use and Privacy Statement.
  2. Microsoft's Terms of Use are found at the following link: <http://go.microsoft.com/fwlink/?LinkId=21969>
  3. Microsoft's Privacy Statement is found at the following link: <http://go.microsoft.com/fwlink/?LinkId=21970>

Additional use restrictions and terms of use for any data and/or imagery provided by Microsoft as part of the Services are specified in Attachment No. 1 to this Use Agreement which is incorporated by reference herein and made part of this Use Agreement.

IN WITNESS WHEREOF, the parties have caused this Use Agreement, together with its Attachment No. 1 hereto, to be executed and effective as of the last date written below.

ACCEPTED AND AGREED:

\_\_\_\_\_  
(Licensee)

Signature: \_\_\_\_\_

Printed Name: \_\_\_\_\_

Title: \_\_\_\_\_

Date: \_\_\_\_\_



ENVIRONMENTAL SYSTEMS  
RESEARCH INSTITUTE, INC.  
(ESRI)

Signature: \_\_\_\_\_

Printed Name: \_\_\_\_\_

Title: \_\_\_\_\_

Date: \_\_\_\_\_

**ATTACHMENT NO. 1**  
**TO THE**  
**ArcGIS ONLINE PREMIUM SERVICES USE AGREEMENT**

As a condition of User's access and use of any imagery and/or data provided by Microsoft, User agrees to the following terms:

- a. User's access and use of the Services containing Microsoft data and/or imagery may only be used in applications developed in conjunction with ESRI software.
- b. User's access and use of the Services in a staging environment shall be for development, testing, and maintenance purposes only and not for commercial release product.
- c. User must prominently display or hypertext link the Microsoft "Privacy Statement" and the "Microsoft MapPoint Terms of Use" on the bottom of each web page containing Microsoft data and/or imagery, in the "About" section for desktop applications, or in the end user's terms and conditions for mobile applications, as set forth in Section C above.
- d. User and its end user may not use the Services: (a) to copy, store, archive, and create a database of the Service generated content, except that geocodes may be stored locally when used in conjunction with the Company Applications; (b) in violation of local, state, federal, or equivalent privacy or other laws or regulations; (c) to create routes by optimizing the order waypoints for multiple vehicles at the same time; (d) to deliver individual maneuvers of a calculated route such that the maneuvers are presented to the end-user, or the end-user is alerted to the maneuvers, in any manner synchronized with the end-user's sensor-based position along such route, including, for example, calculating the end-user's position as the end-user traverses the route and communicating a maneuver to the end-user as the end-user approaches the location pertaining to such maneuver; or (e) in any manner that threatens the integrity, performance, or availability of the Service.
- e. Users is prohibited from using or providing access to any bird's-eye imagery (or associated metadata).
- f. Road traffic data in the Service (the "Road Traffic Data") may only be used to calculate and/or derive Traffic Transactions (defined in this Section below) in order to deliver and display such Traffic Transactions on Internet-based web pages (or WAP or substantially similar wireless protocol-based pages, excluding messaging protocols such as email, SMS, MMS or other plain text or rich text messaging), subject to the following restrictions:
  - Road Traffic Data may only be used in combination with the Service and not separately. Users may not deconstruct or mix and match the Road Traffic Data with traffic data from another supplier or associate or add any traffic data to or in combination with the Road Traffic Data. Users may only make available the Road Traffic Data for free, and only for the personal use of end users
  - Road Traffic Data may not be licensed to or used by: (i) radio/television stations; (ii) newspaper services;
  - (iii) any websites owned by (i) and (ii); or, (iv) any government-sponsored traveler information services, including, without limitation 511 services, consumer websites, or variable message signs on roads.
  - Road Traffic Data may not be licensed or used: (i) for television or radio broadcast; (ii) as part of or in conjunction with weather related services; (iii) for animation; (iv) for storing or the provision of continuously updated traffic data or alerts to end users, or (v) to develop a standalone (traffic only) traffic application.
  - Road Traffic Data may not be used by Company, Known Users or made available by Company or Known Users to its end users for use, on an Accurate Positioning Device. "Accurate Positioning Device" means a device or system with the capability to determine its physical location within a positioning accuracy of 200 meters or less. If a device which is not an Accurate Positioning Device based on the foregoing definition has the capability to transmit the Data to an Accurate Positioning Device, then such device will be considered an Accurate Positioning Device. "Traffic Transaction" means the provision of any one of the following: (i) presentation of the Road Traffic Data on or related to a map which is presented through icon(s), text or voice; (ii) presentation of the Road Traffic Data in connection with driving directions, direct or indirect use of the Road Traffic Data to determine travel time for all or any portion of a route, and presentation of available traffic information along a route, all through icon(s), text or voice; (iii) direct or indirect use of the Road Traffic Data to calculate or create routes or alternate routes; and (iv) audio or textual presentation of the Road Traffic Data in a manner that does not involve use of a map or map information and which does not include (i)–(iii) above.
- g. Company and Known Users shall not use the Service to monitor or track the location or movement of Asset(s). "Asset" means one of any of the following classes: person, vehicle, device, or other mobile objects.

- h. Microsoft data and/or imagery is provided AS-IS without warranty and use of such data and/or imagery accessed by the User shall be at user's sole risk.
- i. If User or its end user licenses any application that contains any Microsoft data and/or imagery accessed as part of the Services to the U. S. Government, the following terms shall apply:

- a) **Cost or Pricing Data/Commercial Item.** Microsoft represents that the Service is a "Commercial Item" as defined in FAR Part 2.101. Company acknowledges that Microsoft will not, under any circumstances, accept Service Orders under this Use Agreement that would require the submission of cost or pricing data as defined by 48 CFR 15.4 or the submission of noncommercial items.
- b) **Clauses Incorporated by Reference.** The following FAR clauses are incorporated by reference into this Use Agreement for any orders which are placed on behalf of the United States Federal Government. The version of each clause shall be that version incorporated into Company's prime contract with a United States Federal Government customer.

FAR Clause	Title
52.219-8	Utilization of Small Business Concerns
52.222-26	Equal Opportunity
52.222-35	Affirmative Action for Disabled Veterans and Veterans of the Vietnam Era.
52.222-36	Affirmative Action for Workers with Disabilities.
52.222-39	Notification of Employee Rights Concerning Payment of Union Dues or Fees
52.222-41	Service Contract Act of 1965
52.222-50	Combating Trafficking in Persons
52.222-51	Exemption from Application of Service Contract Act to Contracts for Maintenance, Calibration, or Repair of Certain Equipment-Requirements
52.222-53	Exemption from Application of the Service Contract Act to Contracts for Certain Services-Requirements
52.247-64	Preference for Privately Owned U.S.-Flag Commercial Vessels

- c) **Disputes under a Government Contract.** Regarding any claims, controversies or disputes concerning matters which are subject to the Contract Disputes Act applicable to the prime contract between you and a United States Federal Government customer, the Parties' rights shall be determined in accordance with that Act. In the event that Microsoft is affected by a decision of the U.S. Government under the prime contract, and you do not elect to take Microsoft's claim forward on your own, Microsoft will have a right of indirect claim and appeal to include your reasonable cooperation in filing and sponsoring a claim against the United States Federal Government customer, which right may be exercised within fifteen (15) business days of your notice Microsoft that the you will not proceed with a claim. Any election by Microsoft to pursue a claim shall be at Microsoft's sole expense, and Microsoft will be responsible for all activities associated with prosecution of Microsoft's appeal.
- d) **Disclosure of Confidential Information.** You may disclose Microsoft confidential information contained in this Use Agreement or Addendum to a United States Federal Government customer solely as required under your prime contract with United States Federal Government Customer, provided you identify such confidential information in writing as being subject to 18 U.S.C. Section 1905 (Trade Secrets Act) and 5 U.S.C. Section 552 (Freedom of Information Act).





SMALL MUNICIPAL AND COUNTY  
ENTERPRISE LICENSE AGREEMENT  
(E214-3 05/14/2010)

ESRI, 380 New York St., Redlands, CA 92373-8100 USA. TEL 909-793-2853 • FAX 909-793-5953

This Small Municipal and County Enterprise License Agreement ("ELA") is by and between the organization identified in the ELA Quotation ("Licensee") and Environmental Systems Research Institute, Inc. ("ESRI"), with offices at 380 New York Street, Redlands, California 92373-8100. Unless otherwise agreed to by the parties, the Effective Date of this ELA is the date of the signature below or, if no date is provided with the signature, the date of ESRI's receipt of Licensee's Purchase Order citing this ELA. This ELA grants Licensee certain rights to use specific ESRI Software, Data, Web Services, and Documentation for a limited, fixed period beginning from the Effective Date and provides tailored maintenance subject to payment of fees and the terms of this ELA.

This ELA is composed of (i) this signature page, (ii) the ELA Terms and Conditions, (iii) Exhibit 1—Scope of Use (E300), (iv) Exhibit 2—Training Addendum (E207), and (v) the ELA Quotation, which together constitute the sole and entire agreement of the parties as to the subject matter set forth herein. Should there be any conflict between the terms and conditions of the documents that comprise the ELA, the order of precedence for the documents shall be as follows: (i) this signature page, (ii) the ELA Terms and Conditions, (iii) Exhibit 1—Scope of Use (E300), (iv) Exhibit 2—Training Addendum (E207), and (v) the ELA Quotation. In the event Licensee orders training courses, the terms and conditions of the Training Addendum will take precedence over the provision of the ELA with respect to the training courses. Licensee agrees that additional terms and conditions in any Licensee Purchase Order will not apply, and the terms of this ELA will govern.

ENTERPRISE SOFTWARE SCHEDULE

Unlimited Quantities

Desktop Software and Extensions

ArcInfo

ArcEditor

ArcView

ArcGIS Desktop Extensions: 3D Analyst, Spatial Analyst, Network Analyst, Geostatistical Analyst, ArcScan for ArcGIS, ArcGIS Publisher, Maplex for ArcGIS, Schematics, and Job Tracking for

ArcGIS (JTX)

Server Software and Extensions

ArcGIS Server Workgroup or Enterprise (Advanced, Standard,

ArcIMS

ArcGIS Server Extensions: 3D, schematics, Geostatistical, Job Tracking, Network, Image, and Spatial

Developer

ArcGIS Engine Runtime

ArcGIS Engine Runtime Extensions: 3D, Spatial, Geodatabase Update, Network, Schematics, and Maplex

Limited Quantities

One Annual Subscription to ESRI Developer Network (EDN)

Number of ESRI International User Conference Registrations provided annually	4
Number of Tier 1 Help Desk Individuals authorized to call ESRI	4
Sets of media*	2

\* Additional sets of media may be purchased.

This ELA supersedes any previous agreements, proposals, presentations, understandings, and arrangements between the parties relating to such subject matter, which is the licensing of the Enterprise Software. Except as provided in Section 9.1 Future Versions/Updates, any modifications or amendments to this ELA must be in writing and signed by an authorized representative of each party.

Licensee may accept this ELA by signing and returning it with an authorizing Purchase Order that matches the ELA Quotation, references the ELA, and includes the following statement on the face of its Purchase Order: "THIS PURCHASE ORDER IS GOVERNED BY THE TERMS AND CONDITIONS OF THE ESRI SMALL MUNICIPAL AND COUNTY ELA, AND ADDITIONAL TERMS AND CONDITIONS IN THE PURCHASE ORDER WILL NOT APPLY."

Licensee will return this ELA and its Purchase Order to Attn.: ESRI Customer Service, Dept. SG-ELA, 380 New York Street, Redlands, CA 92373-8100; e-mail it to [service@esri.com](mailto:service@esri.com); or fax it to 909-307-3083.

ACCEPTED AND AGREED:

Licensee Contact **Information**

Contact Name: \_\_\_\_\_

Address: \_\_\_\_\_

City, State, ZIP: \_\_\_\_\_

Telephone: \_\_\_\_\_

Fax: \_\_\_\_\_

E-mail: \_\_\_\_\_

ELA Quotation Number: \_\_\_\_\_

ESRI Contract Number: \_\_\_\_\_

(Licensee) \_\_\_\_\_

By: \_\_\_\_\_  
Signature

Printed Name: \_\_\_\_\_

Title: \_\_\_\_\_

Date: \_\_\_\_\_

## ELA TERMS AND CONDITIONS

### ARTICLE I—DEFINITIONS

**Definitions.** The terms used are defined as follows:

- <sup>s</sup> "Data" means any ESRI or third-party digital dataset(s) including, but not limited to, geographic vector data coordinates, raster, reports, or associated tabular attributes licensed under this ELA.
- <sup>s</sup> "Deploy," "Deployed," or "Deployment" means to redistribute and install or the redistribution and installation of the Enterprise Software (and related key codes/registration files) or its having been redistributed and installed by Licensee on Licensee's hardware.
- "Documentation" means all printed and digital materials including, but not limited to, help files, user reference documentation, training documentation, or technical information and briefings.
- "ELA Fee" means the fee set forth in the ELA Quotation.
- <sup>s</sup> "ELA Maintenance" means Tier 2 Support, updates, and patches provided by ESRI to Licensee for the Enterprise Software.
- "ELA Quotation" means the ESRI quote form provided to Licensee for the Small Municipal and County ELA containing the ELA Fee and annual payment schedule.
- "Enterprise Software" means the items identified in the Enterprise Software Schedule on page 1 of this ELA.
- <sup>s</sup> "Incident" means a failure of the Software to operate according to the Documentation where such failure substantially impacts operational or functional performance.
- <sup>s</sup> "License Agreement" and "ELA" are used interchangeably and mean the ELA Terms and Conditions, including Exhibit 1—Scope of Use (E300), that apply to Enterprise Software provided to Licensee by ESRI under this ELA.
- "Software" means the actual copy of all or any portion of ESRI's proprietary software technology accessed or downloaded from an authorized ESRI Web site or delivered on any media, in any format, including backups, updates, service packs, patches, hot fixes, or permitted merged copies.
- "Samples" means sample code, sample applications, add-ons, or sample extensions of Software, Data, Documentation, or Web Services.
- "Technical Support" means a process to attempt to resolve reported Incidents through error correction: patches: hot fixes; workarounds; replacement deliveries; or any other type of Software, Data, or Documentation corrections or modifications.
- "Term License" means licenses provided for use during a fixed or limited time period concurrent with the term of this ELA.
- "Tier 1 Help Desk" means Licensee point of contact from which all Tier 1 Support will be given to Licensee.
- "Tier 1 Support" means the Technical Support provided by the Tier 1 Help Desk as the primary contact to Licensee in attempted resolution of reported Incidents.
- "Tier 2 Support" means the Technical Support provided by ESRI to the Tier 1 Help Desk when the Incident cannot be resolved through Tier 1 Support.
- "Web Services" means software services or ESRI or third-party data provided by ESRI that perform geographic information system (GIS) functions, tasks, or data services and are accessed over the Internet, excluding Virtual Campus.

### ARTICLE II—INTELLECTUAL PROPERTY RIGHTS AND RESERVATION OF OWNERSHIP

- <sup>b</sup> <sup>ft</sup> is licensed and not sold. ESRI and its own the Enterprise Software and all copies, which are

protected by United States and applicable international laws, treaties, and conventions regarding intellectual property and proprietary rights including trade secrets. Licensee agrees to use reasonable means to protect the Enterprise Software from unauthorized use, reproduction, distribution, or publication. ESRI and its third-party licensors reserve all rights not specifically granted in this ELA including the right to change and improve Web Services.

### ARTICLE 3—GRANT OF LICENSE

**3.1 Grant of License.** Subject to the terms and conditions of this ELA, ESRI grants to Licensee a personal, nonexclusive, nontransferable Term License solely to

- a. Use, copy, and Deploy quantities of Enterprise Software as defined in the Enterprise Software Schedule of this ELA for Licensee's own internal use for a term concurrent with this ELA.
- b. Deploy one subscription of the ESRI Developer Network for use by a single named developer for the term of this ELA.
- c. Access and use any secure ESRI Web site resources made available to Licensee for Licensee's internal use, provided that Licensee follows ESRI's terms of use policy specified therein. All password or controlled access information provided by ESRI shall be treated as ESRI confidential information.
- d. Use Enterprise Software in accordance with Exhibit 1 (provided that all licenses are Term Licenses).

**3.2 Consultant Access.** Subject to 3.1, Licensee may provide access to the Enterprise Software to any consultant or contractor of Licensee, provided consultants' and contractors' use is for the sole benefit of Licensee while (i) working on-site at Licensee's facilities, (ii) remotely accessing or using Enterprise Software from Licensee's on-site computers or machines, or (iii) remotely using/accessing Enterprise Software from a third party's computers or machines under contract to the Licensee. Licensee shall be responsible for compliance by consultants or contractors with the terms and conditions of this ELA. Licensee shall require consultant or contractor to discontinue access to and use of Enterprise Software upon completion of work for Licensee.

### ARTICLE 4—SCOPE OF USE

#### 4.1 Permitted Uses

- a. Licensee may install and store the Software, Data, and Documentation on electronic storage device(s).
- b. Licensee may make one (1) copy of the Software, Data, and Documentation for archival purposes. Licensee may make routine computer backups.
- c. Licensee may customize the Software using any (i) macro or scripting language, (ii) published application programming interface (API), or (iii) source or object code libraries, but only to the extent that such customization is described in the Documentation.
- d. Licensee may use, copy, or prepare derivative works of the Documentation supplied in digital format and thereafter reproduce, display, and redistribute the customized documentation only for Licensee's own internal use. Portion(s) of Documentation supplied in digital format merged with other software and printed or digital documentation are subject to this ELA. Licensee shall include the following copyright attribution notice acknowledging the proprietary rights of ESRI and its licensor(s): "Portions of this document include intellectual property of ESRI and its licensor(s) and are used herein under license. Copyright © [Insert the actual copyright date(s) from the source materials] ESRI and its licensor(s). All rights reserved."

## 4.2 Uses Not Permitted

- a. Except as provided herein, Licensee shall not sell, rent, lease, sublicense, lend, assign, or time-share the Enterprise Software. Licensee shall not act as a service bureau or commercial application service provider (ASP) that allows third-party access to the Enterprise Software. Licensee shall not use Enterprise Software for a site or service and operate the site or the service for a profit or generate revenue through direct or indirect methods (e.g., advertising or charging for access to the site or service).
- b. Except as provided herein, Licensee shall not redistribute the Software to third parties, in whole or in part, including, but not limited to, extensions, components, or DLLs.
- c. Licensee shall not reverse engineer, decompile, or disassemble the Enterprise Software, except to the extent that such activity is expressly permitted by applicable law notwithstanding this restriction.
- d. Except to the extent that applicable law prohibits this restriction, Licensee shall not make any attempt to circumvent the technological measures that control access to, or use of, the Enterprise Software.
- e. Except as provided herein, Licensee shall not redistribute the Software activation number(s), registration number/license authorization file(s), developer license file(s), or Web Services access codes to third parties.
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## ARTICLE 5—TERM AND TERMINATION AND EXPIRATION

**5.1 Term.** The term of the ELA shall be three (3) years from the Effective Date, unless this ELA is terminated earlier as provided herein. The term of all licenses and the authorized period of use for all Enterprise Software Deployed shall be concurrent with the term of this ELA. No indefinite or perpetual term license grants are provided with this ELA.

**5.2 Termination for Lack of Funds.** Either party may terminate this ELA for Lack of Funds. Lack of Funds is the inability of Licensee to secure appropriation of funds through the legislative or governing body's approval process for annual payments due.

**5.3 Termination for a Material Breach.** Either party may terminate this ELA for a material breach by the other party. The breaching party shall be given a period of ten (10) days from date of written notice to cure any material breach.

**5.4 No Use upon Expiration or Termination.** Upon expiration or termination of this ELA, all Enterprise Software Deployed shall terminate. Licensee shall cease access and use of Web Services and clear Web Services client-side data cache and cease use, uninstall, remove, and destroy all Deployed Software, Data, and Documentation and any whole or partial copies, modifications, media, or merged portions in any form and execute and deliver evidence of such actions to ESRI. ELA Maintenance, Virtual Campus access, and User Conference Registrations shall also terminate.

## ARTICLE 6—LIMITED WARRANTIES AND DISCLAIMERS

**6.1 Limited Warranties.** Except as otherwise provided for in this Article 6, ESRI warrants that (i) the unmodified Software will substantially conform to the published Documentation and (ii) the media upon which the Software, Data, and Documentation are provided will be free from defects in materials and workmanship under normal use and service for a period of ninety (90) days from the date of receipt.

**6.2 Data and Web Services Disclaimer.** The Data and Web Services may contain some nonconformities, defects, errors, or omissions. THE DATA AND WEB SERVICES ARE PROVIDED "AS IS" WITHOUT WARRANTY OF ANY KIND. Without limiting the generality of the preceding sentence, ESRI and its licensor(s) do not warrant that the Data and Web Services will meet Licensee's needs or expectations, that the use of the Data and Web Services will be uninterrupted, or that all nonconformities can or will be corrected. ESRI and its licensor(s) are not inviting reliance on this Data or Web Services, and Licensee should always verify actual Data or Web Services.

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**6.4 Internet Disclaimer.** THE PARTIES EXPRESSLY ACKNOWLEDGE AND AGREE THAT THE INTERNET IS A NETWORK OF PRIVATE AND PUBLIC NETWORKS, AND THAT (i) THE INTERNET IS NOT A SECURE INFRASTRUCTURE, (ii) THE PARTIES HAVE NO CONTROL OVER THE INTERNET, AND (iii) NONE OF THE PARTIES SHALL BE LIABLE FOR DAMAGES UNDER ANY THEORY OF LAW RELATED TO THE DISCONTINUANCE OF OPERATION OF ANY PORTION OF THE INTERNET OR POSSIBLE REGULATION OF THE INTERNET THAT MIGHT RESTRICT OR PROHIBIT THE OPERATION OF THE WEB SERVICE.

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## ARTICLE 9—GENERAL PROVISIONS

9.1 Future Versions/Updates. Updated or new Enterprise Software may require additional or revised terms and conditions. Terms and conditions subject to revision are limited to Article 1—Definitions, Article 4—Scope of Use, and Exhibit 1—Scope of Use (E300) or any term as required by law. ESRI may provide notice of the revisions to Licensee in writing or by posting them on ESRI's Web site at [www.esri.com/legal](http://www.esri.com/legal). The revisions shall be incorporated into this ELA upon use of the updated or new Enterprise Software. Should Licensee reject the revisions, then Licensee shall not install or use the revised, updated, or new Enterprise Software.

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9.3 Taxes and Fees. Sales or use taxes for the fees quoted are as required by law. The tax amount may change depending on the time elapsed between this quote and date of the invoice. ESRI will include applicable sales or use taxes on your invoice unless you provide proof with your order that your organization or use of the product is tax exempt.

9.4 No Implied Waivers. The failure of either party to enforce any provision of this ELA shall not be deemed a waiver of the provisions or of the right of such party thereafter to enforce that or any other provision.

9.5 Severability. The parties agree that if any provision of this ELA is held to be unenforceable for any reason, such provision shall be reformed only to the extent necessary to make the intent of the language enforceable.

9.6 Successor and Assigns. Licensee shall not assign, sublicense, or transfer Licensee's rights or delegate its obligations under this ELA without ESRI's prior written consent, and any attempt to do so without consent shall be void. This ELA shall be binding upon the respective successors and assigns of the parties to this ELA.

9.7 Survival of Terms. The provisions of Articles 2, 5, 6, 7, 8, and 9 of this ELA shall survive the expiration or termination of this ELA.

9.8 Equitable Relief. The parties agree that any breach of this ELA may cause irreparable damage and that, in the event of such breach, in addition to any and all remedies at law, a party shall

have the right to seek an injunction, specific performance, or other equitable relief in any court of competent jurisdiction.

**9.9 Governing Law.** This ELA shall be governed by and construed in accordance with the laws of the state in which Licensee is located without reference to conflict of laws principles, except that U.S. federal law shall govern in matters of intellectual property.

#### ARTICLE 10—ELA MAINTENANCE

ELA Maintenance for Software provided under this ELA is included with the ELA Fee. ELA Maintenance includes standard maintenance benefits specified in the most current applicable ESRI U.S. Software Maintenance Program document (found at [www.esri.com/legal](http://www.esri.com/legal)) as modified by this Article 10—ELA Maintenance. ELA Maintenance does not include Technical Support for Web Services.

##### a. Tier 1 Support Provided by Licensee

- (1) Licensee shall provide Tier 1 Support through the Tier 1 Help Desk to all Licensee's authorized users.
- (2) The Tier 1 Help Desk will use analysts fully trained in the Software they are supporting.
- (3) At a minimum, Tier 1 Support will include those activities that assist the user in resolving how-to and operational questions as well as questions on installation and troubleshooting procedures.
- (4) Tier 1 Support analysts will be the initial points of contact for all questions and Incidents. Tier 1 Support analysts shall obtain a full description of each reported Incident and the system configuration from Licensee user. This may include obtaining any customizations, code samples, or data involved in the Incident. The analyst may also use any other information and databases that may be developed to satisfactorily resolve Incidents.
- (5) If the Tier 1 Help Desk cannot resolve the Incident, an authorized Tier 1 Help Desk individual may contact ESRI Tier 2 Support. The Tier 1 Help Desk shall provide support in such a way as to minimize repeat calls and make solutions to problems available to Licensee.
- (6) Tier 1 Help Desk individuals identified by Licensee are the only individuals (callers) authorized to contact ESRI directly for Tier 2 Support. Licensee may revise named individuals by written notice.

##### b. Tier 2 Support Provided by ESRI

- (1) ESRI shall log the calls received from Tier 1 Help Desk individuals.
- (2) ESRI shall review all information collected by and received from Tier 1 Help Desk individuals including preliminary documented troubleshooting provided by Tier 1 Help Desk when Tier 2 Support is required.
- (3) ESRI may request that Tier 1 Help Desk individuals provide verification of information, additional information, or answers to additional questions to supplement any preliminary information gathering or troubleshooting performed by Tier 1 Help Desk.
- (4) ESRI shall attempt to resolve the Incidents submitted by Tier 1 Help Desk by assisting the Tier 1 Help Desk individuals.
- (5) When the Incident is resolved, ESRI shall communicate the information to the Tier 1 Help Desk individuals, and the Tier 1 Help Desk shall disseminate the resolution to the Licensee user.

ESRI may, at ESRI's sole discretion, make patches, hot fixes, or updates available for downloading from ESRI's Web site or deliver them on media.

#### ARTICLE 11—ORDERING, ADMINISTRATIVE PROCEDURES, DELIVERY, AND DEPLOYMENT

##### 11.1 Purchase Orders, Delivery, and Deployment

- a. Licensee shall issue a Purchase Order upon execution of the ELA and annually thereafter in accordance with the ELA Quotation. Payment shall be due and payable within thirty (30) days of the anniversary date of the Effective Date, with the initial payment due within thirty (30) days of execution of the ELA. ESRI's Federal ID Number is **95-2775-732**.
- b. Upon receipt of the initial Purchase Order from Licensee, ESRI shall deliver media containing the Enterprise Software to Licensee for its Deployment activities. ESRI shall ship the media to the ship-to address identified on the Purchase Order, FOB Destination, with shipping charges prepaid.
- c. ESRI shall provide registration numbers or keycodes, as applicable, to activate the nondestructive copy protection program that enables the Enterprise Software to operate.
- d. Licensee shall Deploy, install, configure, and track the Deployment status of the Enterprise Software.

##### 11.2 Purchase Order Requirements

- a. All orders pertaining to this ELA shall be processed through Licensee's centralized point of contact.
- b. The following information shall be included in each Purchase Order:
  - (1) Licensee name; ESRI customer number, if known; and bill-to and ship-to addresses
  - (2) Purchase Order number
  - (3) Applicable annual payment due
  - (4) On the face page of its Purchase Order (or ordering document), Licensee shall insert a reference to the ELA and the following statement: "THIS PURCHASE ORDER IS GOVERNED BY THE TERMS AND CONDITIONS OF THE ESRI SMALL MUNICIPAL AND COUNTY ELA, AND ADDITIONAL TERMS AND CONDITIONS IN THE PURCHASE ORDER WILL NOT APPLY."

#### ARTICLE 12—ENDORSEMENT AND PUBLICITY

This ELA shall not be construed or interpreted as an exclusive dealings agreement or an endorsement of ESRI by Licensee. Licensee agrees that upon execution of the ELA, ESRI may publicize the existence of this ELA.

#### ARTICLE 13—ADMINISTRATIVE REQUIREMENTS

**13.1 OEM Licenses.** If Licensee obtains Software, Data, Web Services, or any component thereof as part of an original equipment manufacturer (OEM) software program or product developed and licensed by an OEM business partner of ESRI, Licensee shall not be entitled to or seek any discount from the OEM business partner or ESRI, directly or indirectly, as a result of or based on the availability of such Software, Data, or Web Services as Enterprise Software under this ELA. In addition, such Software, Data, Web Services, or any component thereof included in the OEM software program or product will be licensed through the license agreement provided by the OEM business partner and not through this ELA.

**13.2 Product Obsolescence.** During the term of this ELA, some Enterprise Software items may become obsolete, may no longer be commercially offered, or may no longer be available for unlimited quantity Deployment. Licensee may continue to use such Enterprise Software that has been Deployed for the term of the ELA, but updates for such obsolete Enterprise Software may not be available. ESRI's Product Life Cycle Support Policy, available at <http://resources.arcgis.com/content/product-life-cycles>, defines the support phases and overall support plans. ELA Maintenance shall be subject to the Product Life Cycle

Support Status, which can be found at <http://resources.arcgis.com/content/product-life-cycles>.

**13.3 Renewal.** Upon expiration of this ELA, the parties will evaluate Licensee's requirements. Any follow-on **ELA** will be offered in accordance with license terms and condition and pricing then in effect and based on Licensee's then current population count.

#### **ARTICLE 14—OPTIONAL ITEMS**

If additional Software identified in the ELA Quotation is acquired, it will be deemed added to the Enterprise Software Schedule and subject to the terms of this **ELA**. If training courses identified in the ELA Quotation are acquired, they will be subject to the terms found in Exhibit 2—Training Addendum. In the event Licensee orders training courses, the terms and conditions of the Training Addendum will take precedence over the provision of the ELA with respect to the training courses.

**EXHIBIT 1**  
**SCOPE OF USE**  
**(E300 05/14/2010)**

The scope of use for the Software, Data, Web Services, and Documentation identified below is described in the applicable footnotes identified in parentheses.

**Software**

- ArcExplorer—Java and Windows Editions (20 and 25)
- ArcGIS API for iPhone (1, 16, 25, and 33)
- ArcGIS Desktop
  - ArcInfo (either 1 or 2 and 25, 26, 33, 44, and 45)
  - ArcEditor (either 1 or 2 and 25, 26, 33, 44, and 45)
  - ArcView (either 1 or 2 and 25, 33, 44, and 45)
- ArcGIS Desktop Extensions (7)
- ArcGIS Engine Developer Kit and Extensions (1, 14, 15, 22, 25, 26, and 43)
- ArcGIS Engine Runtime and Extensions (either 1 or 2 and 15, 22, 25, 26, and 33)
- ArcGIS Explorer (20, 25, and 33)
- ArcGIS for AutoCAD (1, 20, and 25)
- ArcGIS for iPhone (1, 20, 25, and 33)
- ArcGIS Mapping
  - For Excel (5, 6, 33, and 35)
  - For SharePoint (5, 6, 31, 33, 35, and 47)
- ArcGIS Mobile Deployments (1, 15, 16, 25, and 33)
- ArcGIS Server
  - Workgroup (either 3 or 5 and 8, 9, 25, 28, 29, 30, 32, 33, 38, 39, 40, and 45)
  - Enterprise (either 3, 4, or 5 and 8, 9, 25, 27, 31, 33, 38, 39, 40, and 45)
- ArcGIS Server Extensions
  - ArcGIS Server Geoportal Extension (either 3, 4, or 5 and 7 and 52)
  - ArcGIS Server Image Extension (7, 8, and 42)
  - ArcGIS Server Image Extension Service Editor (1)
  - Other Extensions (7)
- ArcGIS Web Mapping APIs (including JavaScript™, Adobe® Flex™, Microsoft® Silverlight™/WPF™, SOAP, and REST) (6, 33, 35, and 53)
- ArcIMS
  - ArcIMS and Extensions (either 3, 4, or 5 and 8, 10, 31, and 45)
- ArcLogistics
  - Desktop (either 1 or 2 and 25)

- Using ArcGIS Online (6, 20, 25, 34, 35, and 46)
- Using ArcGIS Server (6, 20, 25, 34, 35, and 46)
- Navigator (1 and 46)
- ArcPad (1, 12, 13, 25, and 33)
- ArcReader (20, 25, 33, and 45)
- ArcView 3.x and Extensions (1, 7, and 17)
- ESRI Aeronautical Solution (either 1 or 2)
- ESRI Business Analyst (either 1 or 2 and 25, 33, 45, and 48)
- ESRI Business Analyst Server (either 3, 4, or 5 and 8, 9, 21, 25, 28, 31, 33, 39, 40, 45, and 48)
- ESRI Business Analyst Server Developer (6, 25, 33, 35, and 51)
- ESRI Defense Mapping (either 1 or 2)
- ESRI Developer Network (EDN) Software, Web Services, and Data (6, 7, 24, 25, 26, 33, 34, and 35)
- ESRI Nautical Solution (either 1 or 2)
- ESRI Production Mapping (either 1 or 2)
- Geoportal Clients for ArcGIS (7, 20, and 52)
- MapIt (11, 25, 31, 33, 35, 49, and 50)
- MapObjects—Java Edition (1, 5, 8, 15, 18, and 19)
- MapObjects LT (1, 14, and 16)
- MapObjects—Windows Edition (1, 14, 15, 16, and 18)
- MOLE (1)
- NetEngine Internet (5)
- Tracking Server (either 4 or 5 and 31)

**Web Services**

- ArcGIS Online Services (6, 25, 33, 34, and 35)

**Data**

- Address Coder (either 1, 2, or 5 and 21, 22, 25, and 48)
- ArcGIS Data Appliance (6, 23, 25, and 41)
- ESRI Data & Maps (either 1, 2, 3, 4, or 5 and 23 and 37)
- ESRI Data (either 1, 2, or 5 and 25 and 48)
  - Demographic, Consumer Spending, Market Potential, Retail Marketplace, Business, Traffic, Shopping Center, Cable Boundaries, Banking, and Crime
- Sourcebook•America (1 and 21)
- StreetMap Premium (either 1, 2, 4, or 5 and 6 and 25)
- Tapestry Segmentation (either 1, 2, or 5 and 21 and 48)

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  36. Reserved.
  37. Data provided with StreetMap USA may be used for mapping, geocoding, and routing purposes but is not licensed for dynamic routing purposes. For instance, StreetMap USA may not be used to alert a user about upcoming maneuvers (such as warning of an upcoming turn) or to calculate an alternate route if a turn is missed.
  38. The ArcGIS Server **3D** extension included with ArcGIS Server Standard (Workgroup or Enterprise) may only be used for generating globe data cachets or publishing a globe document as an ArcGIS Globe Service. No other use of the ArcGIS Server **3D** extension Software is permitted with ArcGIS Server Standard.
  39. Any editing functionality included with ArcGIS Server is not permitted for use with ArcGIS Server Basic (Workgroup or Enterprise).
  40. Geospatial Enterprise JavaBeans (EJB) provided with ArcGIS Server (Workgroup or Enterprise) is permitted for use only with ArcGIS Server Advanced.
  41. Licensee may only use Data from a single state with the Single State version of ArcGIS Data Appliance. This restriction applies to a large-scale (i.e., scale levels below 1:100,000) street map, transportation layer, boundaries and places layer, and one (1)-meter or better resolution imagery included in the USA Collection. This restriction does not apply to the small-scale (i.e., scale levels above 1:100,000) maps provided in the World Collection, which are intended for display at global and regional scales.
  42. Licensee has the right to one (1) desktop deployment of the ArcGIS Server Image extension Service Definition Editor for every four (4) cores of ArcGIS Server Image extension that are licensed.

43. Licensee may develop an unlimited number of applications on a single computer and deliver the applications to end users with or without the ArcGIS Engine Runtime Software.
44. For any operating system environment in which Licensee runs instances of the Concurrent Use License management software, Licensee may run up to the same number of passive failover instances of the Concurrent Use License management software in a separate operating system environment for temporary failover support.
45. Data licensed with ESRI Business Analyst and ESRI Business Analyst Server is restricted for use only in conjunction with the respective Business Analyst extension.
46. Licensee should not follow any route suggestions that appear to be hazardous, unsafe, or illegal. Licensee assumes all risk of using this navigation Software.
47. Licensee may install and use the Software to provide services to multiple users on the same or other computer(s). The Software is licensed per server. The licensed server is the server on which Licensee has also installed the Microsoft SharePoint Server.
48. Licensee may include reports and maps created from the Software or Data in hard-copy or read-only format for presentation packages or marketing studies for subsidiaries and customers. The total content of the ESRI reports and maps must be less than twenty percent (20%) of Licensee's total content of the presentation package or marketing study. Full, complete, stand-alone reports or maps created from the Software or Data and not part of a presentation package or marketing study cannot be resold, sublicensed, or otherwise transferred without prior written permission of ESRI. Licensee's third-party customer may only receive reports and maps generated by Licensee and may only use the maps and reports received from Licensee for internal purposes. In no case shall Licensee redistribute the Data in digital formats.
49. ESRI MapIt Silverlight Web or WPF applications may not be deployed independent of Licensee's MapIt deployment configuration.
50. Licensee has the right to one (1) desktop deployment of Spatial Data Assistant for each ESRI MapIt server license.
51. ESRI Business Analyst Server Developer and Data may only be installed on one (1) server per license solely for the purposes of research, development, testing, and demonstration of a prototype application.
52. Source code is the intellectual property of ESRI. Licensee shall treat any source code file identified as "Software" in a README file or at <http://www.esri.com/legal/> as a trade secret for Licensee's own internal use only and not for further redistribution or access by unlicensed third parties. Licensee shall not modify the Software, Documentation, Data, or source code to incorporate, embed, link, or otherwise include any code, libraries, or data licensed or distributed under an open source licensing or distribution models similar to Free Software Foundation's GNU General Public License (GPL) or GPL-compliant licenses, including, without limitation, the Artistic License (e.g., Perl), the Mozilla Public License, the Netscape Public License, and the Sun Community or Industry Standards License, that could require a user to make its proprietary source code available to a requesting third party.
53. Deployment license options are as follows:
  - a. A license for Web applications is per the principal registered unique domain identifier. Domain is the Internet domain name registered with a domain name registrar. For example, in example.com or example.com.xx (where xx is a registered country code), **example** is the principal registered unique domain identifier.
  - b. A license for desktop applications is per organization. For the purposes of this license, organization is equivalent to a principal registered unique domain identifier (as described above). For example, desktop applications can be used by any employee of the organization with the principal registered unique domain identifier. There is no limit to the number of applications that can be built and deployed within an organization.

## EXHIBIT 2 TRAINING ADDENDUM (E207CWM 9/09)

### ARTICLE 1—TRAINING DESCRIPTION

ESRI offers instructor-led training related to the use of its proprietary GIS software. ESRI will provide to Licensee a fixed number of days of Instructor-Led Training, as defined in the Small Enterprise Training Package included in the ELA. Instructor-led training events occur at an ESRI Learning Center or via the Web. The ESRI software training course(s) to be conducted, location, and schedule dates are set forth in the ESRI Course Catalog located on ESRI's Training Web site (<http://training.esri.com>). All courses are conducted in substantial conformity with course descriptions outlined on the ESRI Training Web site. ESRI reserves the right to modify course content when necessary due to software technical capabilities or limitations.

### ARTICLE 2—ESRI'S RESPONSIBILITIES

- ESRI will provide an instructor qualified to conduct the course(s) as well as all necessary training materials sufficient for the number of registered participants (hereinafter "Student(s)") on the scheduled dates. ESRI will provide each Student with a course manual where applicable.
- ESRI will confirm Learning Center training class scheduled dates approximately ten (10) business days prior to the class start date.

### ARTICLE 3—LICENSEES RESPONSIBILITIES

- Licensee must ensure the protection of ESRI's copyrights. Licensee shall neither copy or distribute nor permit a third party to copy or distribute any of ESRI's training material(s).
- Licensee must not resell seat(s) to an ESRI training class unless explicitly authorized in writing by ESRI.
- Licensee must confirm that all registered Students meet the minimum prerequisites for the applicable class set forth on ESRI's Training Web site.
- Licensee must submit registrations with a confirmed payment commitment at least seven (7) business days before the class start date. If Licensee submits a registration without a confirmed payment, ESRI will not confirm the seat reservation. The reservation will be added to the waiting list pending payment confirmation and subject to availability.
- U.S. government export control laws and regulations prohibit U.S. persons from engaging in transactions with certain denied persons found on various U.S. Government Denied Persons lists (e.g., U.S. Department of the Treasury's Specially Designated Nationals List, U.S. Commerce Department's Denied Persons/Entity List, etc.). To meet these export requirements, Licensee must submit to the ESRI Training Event Assistant a list of the names of Students that are to attend any training class. Licensee must submit the list of Student names to ESRI at least three (3) business days before the class start date. Any Student that is found on any of the various U.S. Government Denied Persons lists will not be permitted to attend training.
- Licensee is responsible for all Student travel arrangements. ESRI assumes no responsibility for losses from nonrefundable travel arrangements resulting from denial of a Student's participation due to U.S. government export regulation requirements, course scheduling changes, or cancellations.
- Licensee must provide written notice to ESRI's Customer Service of any cancellation, rescheduling, or Student substitution requirements and receive confirmation of these change(s) prior to the class start date.
- Licensee is responsible to ensure that it adheres to the course, facility, and equipment requirements for ESRI training as found at <http://training.esri.com/gateway/index.cfm?fa=trainingOptions.gateway>.

- Students may not use audio and/or video recording equipment within the classroom without prior written approval from ESRI.

### ARTICLE 4—CANCELLATION AND RESCHEDULING POLICY

Licensee may cancel or reschedule Student attendance in training up to three (3) working days before the scheduled class start date. In the event of a cancellation, Licensee will reimburse ESRI for any reasonable travel and shipping expenses incurred by ESRI. In the event Licensee does not notify ESRI at least three (3) days prior to the scheduled training date, ESRI will deduct the appropriate number of class days from the remaining account training days.

If ESRI is unable to conduct the training on the scheduled date, ESRI will notify Licensee at least three (3) business days before the scheduled date.

If cancellation of a training event is necessary due to Force Majeure, the affected party is released in full from the three (3)-business-day notification. The affected party will either reschedule the training or cancel the order without that affected party incurring any liability.

Students may transfer from one scheduled ESRI Learning Center class to another up to *two (2)* times at no additional charge. Subsequent transfers may be assessed an additional nonrefundable transfer fee.

Student substitutions, when a Student's place in class is filled by another person from the same organization, are allowed provided that ESRI Customer Service is notified three (3) business days in advance of the class start date.

### ARTICLE 5—UNIQUE TERMS FOR THE SMALL ENTERPRISE TRAINING PACKAGE

- The training days are available for a period of thirty-six (36) months, commencing on the Effective Date, or when all training days are consumed, whichever is sooner.
- Licensee is committed to scheduled training days when ESRI training requests are received and accepted by ESRI.
- ESRI will invoice for outstanding training expenses where applicable.
- Upon the anniversary, unused training days are forfeited.
- Training days are nontransferable and nonrefundable for any other ESRI products or services.

### ARTICLE 6—CONFIDENTIAL INFORMATION

ESRI or the Licensee may disclose to the other party certain confidential information under this Agreement. The disclosing party shall identify the information as confidential information at the time of disclosure. Each party shall use the confidential information described above only for exchanging information needed to provide the training contemplated by this Agreement. Within fourteen (14) days of completion of the training, each party shall return or destroy and provide written notification of destruction of the confidential information of the other party.

### ARTICLE 7—RESERVATION OF OWNERSHIP AND GRANT OF LICENSE

Except as specifically granted in this Agreement, ESRI and/or its licensors own and retain all right, title, and interest in software, data, documentation, and training materials.

## **ARTICLE 8—WARRANTY**

ESRI will provide training in a manner consistent with the technical and professional standards of the industry.

**8.1 Disclaimer of Warranties.** WITH THE EXCEPTION OF THE LIMITED WARRANTY SET FORTH IN THIS ARTICLE, ESRI DISCLAIMS, AND THIS AGREEMENT EXPRESSLY EXCLUDES, ALL OTHER WARRANTIES, EXPRESS OR IMPLIED, ORAL OR WRITTEN, INCLUDING, WITHOUT LIMITATION, ANY AND ALL WARRANTIES OF MERCHANTABILITY, FITNESS FOR A PARTICULAR PURPOSE, NONINTERFERENCE, AND NONINFRINGEMENT, AS WELL AS ANY WARRANTIES THAT THE DELIVERABLES ARE ERROR FREE.

## **ARTICLE 9—LIMITATION OF LIABILITY AND EXCLUSIVE REMEDY**

EXCEPT FOR INDEMNITY ASSOCIATED WITH CLIENT SITE TRAINING, IN NO EVENT SHALL ESRI BE LIABLE TO LICENSEE FOR COSTS OF PROCUREMENT OF SUBSTITUTE GOODS OR TRAINING; LOST PROFITS; LOST SALES; BUSINESS EXPENDITURES; INVESTMENTS; BUSINESS COMMITMENTS; LOSS OF ANY GOODWILL; OR ANY INDIRECT, SPECIAL, EXEMPLARY, CONSEQUENTIAL, OR INCIDENTAL DAMAGES ARISING OUT OF, OR RELATED TO, THIS AGREEMENT, HOWEVER CAUSED OR UNDER ANY THEORY OF LIABILITY, EVEN IF ESRI HAS BEEN ADVISED OF THE POSSIBILITY OF SUCH DAMAGES. ESRI'S TOTAL CUMULATIVE LIABILITY HEREUNDER, FROM ALL CAUSES ~~OF~~ ACTION OF ANY KIND, SHALL IN NO EVENT EXCEED THE AMOUNT ACTUALLY PAID BY LICENSEE FOR THE PORTION OF THE TRAINING UNDER THIS AGREEMENT. THESE LIMITATIONS SHALL APPLY NOTWITHSTANDING ANY FAILURE OF ESSENTIAL PURPOSE ~~OF~~ ANY LIMITED REMEDY.

## **ARTICLE 10—UCC INAPPLICABILITY**

Training provided under this Agreement will not be governed by the Uniform Commercial Code (UCC) and will not be deemed "goods" within the definition of the UCC.